

STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

DOCKET

07-AFC-6

DATE 02/09/12

RECD. 02/09/12

In the Matter of:)
Application for Certification for the)
Carlsbad Energy Center Project (CECP))
_____)

Docket No. 07-AFC-6

Motion of City of Carlsbad and the City of Carlsbad as successor agency
to the former Carlsbad Redevelopment Agency
to Strike Staff Memorandum (Reply Brief) of February 2, 2012

Under the authority of California Code of Regulations 1716.5, the City of Carlsbad and City of Carlsbad as successor agency to the former Carlsbad Redevelopment Agency (hereafter "Carlsbad") hereby file this motion to strike CEC Staff's Memorandum directed to this Committee, dated February 2, 2012. Although styled as a "memorandum", this document is a 12-page, single spaced reply brief that addresses issues raised at the hearings primarily by the Center for Biologic Diversity. It constitutes an unauthorized reply brief and should be stricken.

Hearings on this matter concluded on December 12, 2011. On this date the briefing schedule was determined. The briefs were to be no more than ten pages in length (Tr. 341) and the Hearing Officer determined that "reply briefs didn't seem necessary" (Tr. 262). All parties followed this guidance, including CEC staff, which is considered an independent party to these proceedings.


However, with no prior authorization from the Hearing Officer or notice to other parties, CEC staff filed its "memorandum" on February 2, 2012. Allowing only one party to file a reply brief clearly disadvantages all other parties. Staff's memorandum also violates the fundamental rule that new matters cannot be raised for the first time in a reply brief. The Committee should strike the Staff filing, or, in the alternative, issue an order establishing a schedule for reply briefs from all parties.

While most of the substance of the staff reply brief concerns the greenhouse gas issue, which is addressed by the Center for Biological Diversity, staff also revisits the issue of the need for the CECP. In its memo, the staff treats the CAISO's December 8, 2011 PowerPoint presentation and the testimony of the CAISO witness based on that presentation as a final analysis and the "official CAISO position." (Memorandum, page 5) Staff's position is contrary to oral testimony by the CAISO witness that the report is only final when approved by the CAISO board (TR, December 12, 2012, page 56). In addition, it ignores the disclaimer included in the written transmission assessment report released by the CAISO on January 31, 2012 which specifically states regarding the OTC analysis: "This long-term assessment is preliminary because the official long-term supply and demand outlook is typically carried out under the

CPUC Long-Term Procurement Plan (LTPP) process with significant participation from various stakeholders.” (CAISO, 2011-2012 Transmission Plan, January 31, 2012, page 218) Following release of the CAISO’s preliminary written report, both SDG&E and the CPUC DRA have expressed concerns and criticisms regarding the preliminary analysis and supporting assumptions.

Staff’s unauthorized late filing is improper and severely prejudicial to the other parties. Carlsbad is fearful that the Committee may rely on the Staff’s recent characterization of the CAISO preliminary analysis. If the Staff’s “memorandum” is not stricken, Carlsbad would like the opportunity to file a reply brief on these issues raised in the staff memorandum.

Dated: Feb 9, 2012



Ronald R. Ball
City Attorney for the City of Carlsbad and
General Counsel for Carlsbad Redevelopment Agency
1200 Carlsbad Village Drive
Carlsbad, CA 92008
(760) 434-2891

Allan J. Thompson
Special Counsel for City of Carlsbad and
Carlsbad Redevelopment Agency
21 “C” Orinda Way, #314
Orinda, CA 94563
(925) 258-9962

ORDER

The Committee, having read and considered the objections of the City of Carlsbad and the Center for Biological Diversity, and good cause appearing therefore, the memorandum filed by the CEC staff on February 2, 2012 is hereby stricken.

Alternatively, other parties to these proceedings are entitled to file reply briefs no later than _____, 2012

It is so ordered.

Presiding Member



BEFORE THE ENERGY RESOURCES CONSERVATION AND DEVELOPMENT
COMMISSION OF THE STATE OF CALIFORNIA
1516 NINTH STREET, SACRAMENTO, CA 95814
1-800-822-6228 – WWW.ENERGY.CA.GOV

APPLICATION FOR CERTIFICATION
FOR THE **CARLSBAD ENERGY
CENTER PROJECT**

Docket No. 07-AFC-6
PROOF OF SERVICE
(Revised 11/29/2011)

APPLICANT

Jennifer Hein
George Piantka, PE.
NRG Energy, Inc., West Region
5790 Fleet Street, Ste. 200
Carlsbad, CA 92008
jennifer.hein@nrgenergy.com
george.piantka@nrgenergy.com

APPLICANT'S CONSULTANTS

Robert Mason, Project Manager
CH2M Hill, Inc.
6 Hutton Centre Drive, Ste. 700
Santa Ana, CA 92707
Robert.Mason@ch2m.com

Megan Sebra
CH2M Hill, Inc.
2485 Natomas Park Drive, Ste. 600
Sacramento, CA 95833
Megan.Sebra@ch2m.com

COUNSEL FOR APPLICANT

John A. McKinsey
Stoel Rives, LLP
500 Capitol Mall, Suite 1600
Sacramento, CA 95814
jamckinsey@stoel.com

INTERESTED AGENCIES

California ISO
e-recipient@caiso.com

INTERVENORS

Terramar Association
Kerry Siekmann & Catherine Miller
5239 El Arbol
Carlsbad, CA 92008
siekmann1@att.net

City of Carlsbad
South Carlsbad Coastal
Redevelopment Agency
Allan J. Thompson
21 "C" Orinda Way #314
Orinda, CA 94563
allanori@comcast.net

City of Carlsbad
South Carlsbad Coastal
Redevelopment Agency
Joseph Garuba,
Municipals Project Manager
Ronald R. Ball, Esq., City Attorney
1200 Carlsbad Village Drive
Carlsbad, CA 92008
Joe.Garuba@carlsbadca.gov
ron.ball@carlsbadca.gov

California Unions for Reliable Energy
(CURE)
Marc D. Joseph
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
gsmith@adamsbroadwell.com
mdjoseph@adamsbroadwell.com

Center for Biological Diversity
c/o William B. Rostov
EARTH JUSTICE
426 17th Street, 5th Floor
Oakland, CA 94612
wrostov@earthjustice.org

Power of Vision
Julie Baker & Arnold Roe, Ph.D.
4213 Sunnyhill Drive
Carlsbad, California 92013
julbaker@pacbell.net
roe@ucla.edu

Rob Simpson
Environmental Consultant
27126 Grandview Avenue
Hayward, CA 94542
rob@redwoodrob.com

April Rose Sommer
Attorney for Rob Simpson
P.O. Box 6937
Moraga, CA 94570
aprilsummerlaw@yahoo.com

**ENERGY COMMISSION –
DECISIONMAKERS**

JAMES D. BOYD
Vice Chair and Presiding Member
jboyd@energy.state.ca.us

KAREN DOUGLAS
Commissioner and Associate Member
kldougla@energy.state.ca.us

Galen Lemei
Adviser to Commissioner Douglas
glemei@energy.state.ca.us

Tim Olson
Adviser to Vice Chair Boyd
tolson@energy.state.ca.us

Paul Kramer
Hearing Officer
pkramer@energy.state.ca.us

ENERGY COMMISSION STAFF

Mike Monasmith
Siting Project Manager
mmonasmi@energy.state.ca.us

Dick Ratliff
Staff Counsel
dratliff@energy.state.ca.us

**ENERGY COMMISSION – PUBLIC
ADVISER**

Jennifer Jennings
Public Adviser's Office
publicadviser@energy.state.ca.us

DECLARATION OF SERVICE

I, Flora Waite, declare that on, 2/9/2012, I served and filed copies of the attached Motion of City of Carlsbad to Strike Staff Memorandum of 2/2/12 dated 2/9/12.
The original document, filed with the Docket Unit or the Chief Counsel, as required by the applicable regulation, is accompanied by a copy of the most recent Proof of Service list, located on the web page for this project at: [www.energy.ca.gov/sitingcases/carlsbad/index.html].

The document has been sent to the other parties in this proceeding (as shown on the Proof of Service list) and to the Commission's Docket Unit or Chief Counsel, as appropriate, in the following manner:

(Check all that Apply)

For service to all other parties:

- ☒ Served electronically to all e-mail addresses on the Proof of Service list;
- ☐ Served by delivering on this date, either personally, or for mailing with the U.S. Postal Service with first-class postage thereon fully prepaid, to the name and address of the person served, for mailing that same day in the ordinary course of business; that the envelope was sealed and placed for collection and mailing on that date to those addresses marked "hard copy required."

AND

For filing with the Docket Unit at the Energy Commission:

- ☒ by sending an original paper copy and one electronic copy, mailed with the U.S. Postal Service with first class postage thereon fully prepaid and e-mailed respectively, to the address below (preferred method); **OR**
- ☐ by depositing an original and 12 paper copies in the mail with the U.S. Postal Service with first class postage thereon fully prepaid, as follows:

CALIFORNIA ENERGY COMMISSION – DOCKET UNIT

Attn: Docket No. 07-AFC-6
1516 Ninth Street, MS-4
Sacramento, CA 95814-5512
docket@energy.state.ca.us

OR, if filing a Petition for Reconsideration of Decision or Order pursuant to Title 20, § 1720:

- ☐ Served by delivering on this date one electronic copy by e-mail, and an original paper copy to the Chief Counsel at the following address, either personally, or for mailing with the U.S. Postal Service with first class postage thereon fully prepaid:

California Energy Commission
Michael J. Levy, Chief Counsel
1516 Ninth Street MS-14
Sacramento, CA 95814
mlevy@energy.state.ca.us

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, that I am employed in the county where this mailing occurred, and that I am over the age of 18 years and not a party to the proceeding.

